COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

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Bay State Gas Company	**)**	**D.T.E. 01-107**
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REPLY BRIEF OF THE

MASSACHUSETTS DIVISION OF ENERGY RESOURCES

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May 9, 2002

I. INTRODUCTION

The Massachusetts Division of Energy Resources ("DOER") incorporates herein the procedural history and substantive arguments set forth in DOER's Initial Brief as filed with the Department of Telecommunications and Energy (the "Department") on April 25, 2002. On May 2, 2002 the Bay State Gas Company ("Bay State" or "the Company") filed its Initial Brief. This Reply Brief articulates DOER's conclusions following receipt of Bay State's Initial Brief. This Reply Brief also provides an *erratum* in response to several misinterpretations of DOER's position evidenced by Bay State's Initial Brief.

II. SUMMARY OF DOER POSITION

The evidence presented by Bay State in support of its Petition for approval of certain fees and charges (the "Petition") falls short of the just and reasonable standard Bay State must demonstrate in order to revise its current Terms and Conditions.[1]

Bay State's case is bereft of any actual data supporting the conclusions drawn about incremental costs. Similarly, Bay State provides no support for the costs it refers to as "market based." Whether characterized as incremental or market based costs, Bay State offers conjecture, speculation, and anecdotes, without quantitative analysis or demonstrable support.

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1 Bay State proposes the following revisions to the Terms and Conditions (effective on November 1, 2000):

Section 14.2.2: A $0.60 fee per bill per month, to be billed to the supplier, for Standard Passthrough Billing;

Section 14.2.1: A $1.50 fee per bill per month, to be billed to the supplier, for Standard Complete Billing;

Section 24.6.6: A $0.10 fee per customer per month, top be billed to the supplier, for General Pool Administration;

Sections 24.5.9 and 24.6.6: A $10.00 fee per switch per customer, to be billed to the supplier;
Section 11.5.1: A $1,400.00 fee for device and installation of instrumented meters, a $425.00telemetering fees

III. ARGUMENT

A. Bay State Failed to Present a "Clear and Reasonable Analysis" Justifying the Proposed Fees and Charges

For any petition seeking Department approval of fees and charges, "[t]he Company is required to prove its case before the Department by presenting a clear and reasonable analysis." Fitchburg Gas and Electric Light Company v. Department of Public Utilities; 375 Mass. 571, 582, (1978) citing New England Tel. & Tel. Co. v. Department of Public Utilities; 371 Mass. 67, 79 (1976).

A review of the written information provided through discovery and record requests and of the testimony of Bay State's witnesses fails to provide the requisite analysis. Bay State claims that its five years worth of experience implementing the Pioneer Valley Customer Choice Program (the "Pilot Program") imbued it with significant, substantive experience concerning the costs attendant to providing billing services to suppliers. (Bay State Initial Brief at 4 – 5). Bay State also claims that the Pilot Program allowed the Company to develop data quantifying the costs associated with billing services (Bay State Initial Brief at 5). While not disparaging Bay State's experience, it would seem that Bay State did not develop sufficient expertise from the Pilot Program to maintain cost data and records that could be reviewed by the Department and the Intervenors. Bay State's experience in the Pilot Program with developing market based rates apparently failed to include communicating with market participants or engaging in any market research.

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for device and installation of non-instrumented meters, and a $6.50 per month fees applicable to both devices.

Finally, Bay State's experience with the Pilot Program did not provide any basis for its customer switching fee a/k/a its slamming fee.[2]

When questioned about the methodology by which costs were derived for use of information systems for supplier billing, Joseph Ferro, Bay State's manager for pricing strategy and rate design, was unable to provide any consistent approach:

> Q. How did you derive the numbers to which you made reference. For example, maintenance of FTB and Web sites, three hours a week; how was that derived?
>
> A. (Ferro) I'll start off by just saying that we've had lengthy discussions with our IT area to give us their assessment of how much time they spend on these various tasks; and that was a primary source of the numbers. They certainly used their experience of attending to these tasks in the recent past to come up with these numbers.
>
> Q. So these numbers would reflect an average over the past three years, the past five years…
>
> A. (Ferro) I think it's a combination of what they've recently experienced and what they anticipate going forward. (Tr. at 39)

When questioned about allocating the costs incurred to provide billing services to suppliers, compiled as an account separate and distinct from the Company's routine billing services, Mr. Ferro testified as follows:

> Q. Has Bay State been able to quantify, I'll use your phrase, the real costs you've been experiencing for providing these services?
>
> A. Again, we've quantified and identified only the incremental costs of providing these services. It does not reflect any fully allocated costs of providing these services; it's just identifying the incremental ongoing costs of providing these services. Those costs that we just discussed on DOER 1-6 and 7, those are what we call real costs. We've been experiencing them, and will continue to experience them.

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2 In response to D.T.E. RR No. 2, Bay State produced several bound volumes of information about the Pilot Program. The information consisted of customer tracking surveys; no cost data or cost documentation was provided.

> Q. Is there any quantification reduced to writing that we could review for the costs incurred to date?
>
> A. (Ferro) The company is establishing a tracking mechanism. As it has requests for IT service to support supplier services, we would identify them. **Historically, I don't believe we have on record the costs that are specific to providing these additional services**. (emphasis added).
>
> Q. So there is in essence no useful way to break this out? That doesn't sound like good data for that purpose.
>
> A. (Ferro) Yes, that's correct. (Tr. at 47 – 48)

The same paucity of any consistent methodology is evident from the testimony concerning the derivation of market based prices for elements of the proposed billing service fees:

> A. (Ferro) You are asking back then [during the Pilot Program]; how much it cost the company to produce a bill back then?
>
> Q. That's correct; and I'm asking it very narrowly, within the confines of the pilot.
>
> A. (Ferro) **I'm not aware of any analysis, distinct analysis, determining what it cost the company for the complete billing function back when we established a charge in the pilot.** (emphasis added) (Tr. at 32)

Bay State claims the proposed fees and charges reflect the input and participation of market participants, providing the Company with a basis for objecting to the concept of a generic inquiry on supplier fees, as was done in the electricity market.[3] This objection is compromised by the testimony of Robert Slate, Bay State's manager for transportation services:

> Mr. Kofitse (DTE): What parties participated in setting the fees under the pilot program? The supplier fees charged under the pilot program, which parties participated in setting those fees?

3 See D.T.E. 01-28.

> Q. (Slate): I believe Bay State sort of, at the request of suppliers, came up with a price and said this is what it is and **they either took it or left it. There wasn't a lot of discussion.** (emphasis added) (Tr. at 104)

In support of the proposed $10.00 customer switching fee, Mr. Slate testified about how the fee, implemented at the beginning of the Pilot Program in 1996, related to the costs of the service:

> Q. Did the pilot program amass any data concerning the incremental cost of switching customers?
>
> A. (Slate) **We did not do any in-depth study as to the incremental cost of switching customers, no**. (emphasis added). (Tr. at 14)

Shortly thereafter, Mr. Slate characterized the switching fee as, in part a deterrent to discourage slamming, and in part a cost collection device derived by the Company without a quantitative basis:

> The $10 fee was set in place in part as a deterrent, in part as a way of collecting costs associated with the switch that, again, were difficult to capture. Even today they're difficult to capture, because the nature of each case is so unique. (Tr. at 14 – 15)

Despite Mr. Slate's initial testimony as to the "deterrent" effect of the switching fee, when questioned by the Department, Mr. Slate could draw no correlation between imposing the fee and any consequent reduction in incidences of slamming:

> Q. Mr. Kofitse (DTE): If we look at DTE 1-7, the data that the company provided on the number of slamming cases, and if you append to that data the switching fees charged each year from 1996 to the year 2000, statistically, can the company make any inference regarding the relationship between switching fees and number of slamming cases?
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> A. (Slate): I believe, when it comes with a price to pay for an enrollment or a switch, a supplier takes more care insuring that they have the customer's authorization. That's what I'm seeing from these numbers.
>
> **Q. But the question was, statistically, can you make any inference using that data about the relationship between switching and slamming?**

A. I don't believe I can make anything statistically, no. (emphasis added) (Tr. at 111)

The only conclusion that is completely clear from this testimony is that Bay State created this fee without empirical data or supporting methodology.

B. Bay State Cannot Discern To What Extent the Proposed Fees and Charges May Have Been Recovered Through Other Means

Bay State asserts that this Petition is necessary and appropriate, outside of a rate case, because Bay State has incurred, and is currently incurring, significant costs for providing these services to suppliers.[4] What Bay State is notably less certain about is the extent to which these costs (even presuming they were accurately quantified and allocated) are significant enough to justify bringing a single issue rate case, and/or to what extent Bay State is already recovering these costs through base rates and by other means.[5]

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4 Bay State asserts that this Petition does not constitute a single issue rate case because the claimed costs are *sui generis*. While DOER obviously disagrees with Bay State's characterization, this issue was dealt with sufficiently in DOER's Initial Brief. It is unnecessary to address it again here.

5 DOER requests that the Department take judicial notice of the pre-filed testimony of Stephen H. Bryant, Bay State's Vice President of Regulatory and Government Policy, in D.T.E. 01-81. Mr. Bryant explains that the rate plan for Bay State's base rates, approved by the Department in 1997 in D.P.U. 97-97 (1997), provided the Company with the capital necessary to implement portions of the Pilot Program:

> The early pilot program required substantial capital and resource investments in new processes and systems as well as customer communications to ensure its success. (Prepared Direct Testimony of Stephen H. Bryant, page 10, lines 2 – 4).
>
> The rate plan also provided the Company with the opportunity to focus important resources on the many efforts that Bay State was pursuing to keep pace with industry changes. In particular, the plan provided funding for the aggressive customer choice initiatives [the Pilot Program] described previously. (Prepared Direct Testimony of Stephen H. Bryant, page 11, lines 4 – 7)

It is also worth noting that Robert Slate testified that Bay State was currently recovering supplier billing service costs through existing contracts voluntarily entered into with Bay State by various suppliers.
(Tr. at 34)

Bay State's witnesses were, at best, ambivalent about costs incurred and the effects upon revenue. While Bay State insists that these fees are necessary and are not being recovered through any mechanism now in place (Initial Brief at 8), the testimony tells a different story.

When asked about proposed telemetering fees, Joseph Ferro testified as follows:

> Q. How are you handling the incremental costs right now for this?
>
> A. The incremental costs of installing devices?
>
> Q. Right.
>
> A. They would just be borne by the shareholders.
>
> Q. Is Bay State suffering a revenue deficiency as a result of this?
>
> A. If you're asking me if Bay State is underearning, certainly, depending on how you look at the company's revenue requirements and cost of service, the answer could be a resounding yes.[6] (Tr. at 23)

Mr. Slate was less certain about these costs; whether they were actually being incurred; whether Bay State could even break them out, separate and distinct from its routine billing operations, and what impact these costs could have on the Company's revenue flow:

> A. Let me add just a little perspective.
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> Q. Sure.
>
> A. The telemetering charge we're talking about is really only required for 118 meters on our system, ninety percent of which are already transporting; so any shortfall in the ten other meters is probably going to be pretty insignificant.

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6 Mr. Ferro's testimony that the Company could be underearning supports DOER's conclusion that these issues are not susceptible to full and fair consideration outside of a rate case. "Whether a company has over or underearned must be determined in the context of all of its costs and revenues and can not be assessed outside of a full and contemporary cost of service study." *Fitchburg Gas and Electric Light Company*, D.T.E. 99-118, citing *Mass-American Water Co.*, D.P.U. 95-118 (1995); *Fitchburg Gas and Electric Light Co.*, D.T.E. 97-115/98-120 (1999).

Q. So that I should not be looking for that [telemetering charges] in your next rate case.

A. That would be my hunch. We wouldn't be able to capture it. (Tr. at 61 – 62)

Bay State's own witnesses cannot tell a consistent story about how the proposed fees and charges were derived. They cannot testify with any certitude about whether these fees and charges were recovered as part of Bay State's routine operations, through voluntary supplier fee agreements, or through funding for the Pilot Program. Bay State's assertions in this Petition that the proposed fees and charges are fair and appropriate are simply not supported by the totality of the evidence Bay State presented.

IV. CONCLUSION

Bay State has failed to demonstrate that the proposed fees and charges are just and reasonable, nor has Bay State provided a clear and reasonable analysis for proposing these fees and charges. Bay State can not expect the Department, based on the evidence presented in this proceeding, to intuit the facts and law necessary to approve Bay State's Petition.

DOER therefore maintains that the Department should:

(1) Deny the Petition and direct Bay State to reserve these fees and charges for consideration by the Department in its next base rate proceeding, or

(2) Initiate a Generic Inquiry on Its Own Motion into the Propriety of Charging Supplier Fees and consider Bay State's Petition within the context of that Generic Inquiry.

Respectfully submitted,

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